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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,539	02/26/2002	Wenda Carlyle	PA872	9853

28390 7590 11/16/2005
MEDTRONIC VASCULAR, INC.
IP LEGAL DEPARTMENT
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

EXAMINER

WEBMAN, EDWARD J

ART UNIT PAPER NUMBER

1616

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/085,539	Applicant(s) CARLYLE ET AL.	
	Examiner Edward J. Webman	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,9,11 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,9,11,21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1, 2, 5-7, 9, 11, 21, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hossainy et al in view of Dasseux.

Hossainy et al teach coated stents (title). Reducing the incidence of restenosis is disclosed (column 1 lines 16-20). Polycaprolactone is specified (column 4 lines 22-24). Vascular stents are disclosed (column 14 lines 11-13). Delivery of therapeutic agents in the coating is specified (column 7 lines 56 et seq.) Rapamycin and cyclosporine as immunosuppressives are disclosed (column 8 line 32). Mixing one or more therapeutic agents in the coating is specified (column 8 lines 36-38).

Dasseux teaches drug coated stents to reduce the risk of restenosis (abstract, column 117 lines 1-4). Rosiglitazone is specified (column 121 line 64).

It would have been obvious to one of ordinary skill to add rosiglitazone to the coated stent of Hossainy et al to achieve the beneficial effect of an additional agent to reduce the incidence of restenosis in view of Dasseux. As to the elected rapamycin analogue, Hossainy et al teach cyclosporine and rapamycin as immunosuppressives, therefore, cyclosporine is analogous to rapamycin in the latter's function as an immunosuppressive.

Applicants argue that because Hossainy et al do not teach rosiglitazone, the secondary references cannot be combined. However, if Hossainy did so teach applicants would be faced with an anticipation rejection under 35 USC 102. Applicants argue that Dasseux teaches a stent only in passing. However, applicants cite no case law for the requirement of a threshold number of recitations below which a teaching may not be combined. Applicants also argue that Dasseux does not teach PPAR agonists.

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However, rosiglitazone is such an agent. Applicants further argue that Dasseux teaches away from the claimed invention because Dasseux only teaches a PPAR agonist in combination with the disclosed novel compound. However, applicants do not exclude such a compound.

No claims allowed.

It is noted that "said rapamycin derivative" in non-elected claim 25 has no antecedent basis in the plural "derivatives of rapamycin" in claim 22.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 571-272-0633. The examiner can normally be reached on M-F from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan, can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


EDWARD J. WEBMAN
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